

(c) *Date of receipt.* A request that complies with paragraphs (a) and (b) of this section is deemed a “perfected request.” A perfected request is deemed received on the actual date it is received by OSTP. A request that does not comply with paragraphs (a) and (b) of this section is deemed received when sufficient information to perfect the request is actually received by OSTP. For requests that are expected to result in fees exceeding \$250, the request shall not be deemed to have been received until OSTP has received full payment or satisfactory assurance of full payment as provided under § 2402.8.

#### § 2402.5 Responses to requests.

(a) *Responses within 20 working days.* OSTP will exercise all reasonable efforts to acknowledge, grant, partially grant, or deny a request for records within 20 working days after receiving a perfected request.

(b) *Extensions of response time in “unusual circumstances.”* In circumstances where a determination as provided in paragraph (a) of this section is not possible within 20 working days, OSTP may extend the time limit prescribed in paragraph (a) of this section as necessary to adequately respond to a request. OSTP shall notify the requester of the extension, the reasons for the extension, and the date on which a determination is expected. In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed within the time limit, or to agree to a reasonable alternative time frame for processing. Circumstances justifying a time limit extension as provided in this paragraph (b) include, but are not limited to, requests that require OSTP to:

- (1) Search for and collect the requested records from off-site storage facilities;
- (2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request;
- (3) Consult, with all practicable speed, with another agency having a substantial interest in the determination of the request; or
- (4) Perform searches of records of former employees.

(c) *Two-track processing.* To ensure the most equitable treatment possible for all requesters, OSTP will process requests on a first-in, first-out basis, using a two-track processing system based upon the estimated time it will take to process the request.

(1) *Simple requests.* The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days. A requester whose request does not qualify as a simple request may be given an opportunity to limit the scope of his or her request in order to qualify for faster processing.

(2) *Complex requests.* The second track is for requests involving “unusual circumstances,” as described in paragraph (b) of this section, that are expected to take more than 20 working days to complete.

(d) *Expedited processing.* (1) Expedited requests: OSTP may take requests out of order and expedite the processing of a request upon receipt of a written statement that clearly demonstrates a compelling need for expedited processing. Requesters must provide detailed explanations to support their expedited requests. For purposes of determining expedited processing, the term compelling need means:

- (i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or
- (ii) That a request is made by a person primarily engaged in disseminating information, and the person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A person requesting expedited processing must include a statement certifying that the compelling need provided is true to the best of the requester’s knowledge and belief.

(3) OSTP may grant or deny a request for expedited processing as a matter of agency discretion. A determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 working days after receipt of the perfected request.

## § 2402.6

(e) *Content of denial.* When OSTP denies a request for records, either in whole or in part, the written notice of the denial shall state the reason for denial, and cite the applicable statutory exemption(s), unless doing so would harm an interest protected by the exemption(s) under which the request was denied, and notify the requester of the right to appeal the determination as specified in § 2402.7. The requester's failure to make advance payment or to give a satisfactory assurance of full payment required under § 2402.8 may be treated as a denial of the request and appealed under § 2402.7.

(f) *Identifying responsive records.* In determining which records are responsive to a request, OSTP ordinarily will include only records in its possession as of the date the component begins its search for them.

(g) *Consultations and referrals.* When OSTP receives a request for a record in its possession, it shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency best able to determine whether to disclose it, or to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it. OSTP shall notify the FOIA requester in writing that a referral of records has been made, provide the name of the agency to which the referral was directed, and include that agency's FOIA contact information.

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(h) *Redactions.* For redactions within disclosed records, OSTP shall:

(1) Indicate the FOIA exemption under which a redaction is made, unless including that exemption would harm an interest protected by the exemption; and

(2) Indicate, if technically feasible and reasonable, the amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion is made.

### § 2402.6 Business information.

(a) *In general.* Business information obtained by OSTP from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by OSTP from a submitter that may be protected from disclosure under Exemption 4 of FOIA.

(2) *Submitter* means any person or entity from whom OSTP obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* OSTP shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may